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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,581	11/21/2003	Kurt K. Carbonero	0889.3029.002	3250

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10/01/2004

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EXAMINER

WONG, STEVEN B

ART UNIT PAPER NUMBER

3711

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/719,581		CARBONERO, KURT K.	
	Examiner		Art Unit	
	Steven Wong		3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>nov 21 2003</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (3,858,876). Williams discloses a sports ball (note Figures 5 and 6) comprising a first image (46, 48) of a release hand. Regarding the limitation for first indicia indicating that the person's palm should not touch the ball, attention is directed to Figure 6 of Williams. Here, the elimination of the bottom portion of the palm of the hand (as compared to the representation of the hand in Figure 5) is inherently capable of acting as an indication that the person's palm should not touch the ball.

Regarding claims 8 and 9, Williams includes an image of a guide hand (note Figures 5-7 and 9). The limitation for the universal finger relates to the meaning and information conveyed by the printed matter and is not considered to be a patentable difference. See **Ex parte Breslow 192 USPQ 431**.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (3,858,876) in view of Poegel, Jr. (D485,316). Regarding claims 2-4 and 10-12, Poegel, Jr. provides a training basketball including a representation of a hand's palm and fingers and additional indicia (lines, dot at the tip of the index finger and arrows). The additional indicia is obviously capable of indicating to the user that he should release the ball with the three middle fingers and also that one of those fingers should be the last finger touching the ball at the end of the release. Again, any differences between the indicia in the claimed invention and the game ball of Williams as modified by Poegel, Jr. resides in the meaning and information conveyed by the printed matter and such differences are not considered patentable differences.

Regarding claims 5 and 6, Williams discloses that it is desirable for the user to shoot the ball primarily using his index finger (26), his middle finger (30) and his third finger (32). It would have been obvious to one of ordinary skill in the art to provide the ball of Williams as modified by Poegel, Jr. with an instruction manual indicating that the dot, the lines or the arrows indicate the proper fingers to use during shooting in order to assist the user in the proper shooting technique. The applicant should note that the claims fail to limit the legend to the surface of the ball.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (3,858,876) in view of Page et al. (6,722,889). Page discloses that it is well known in the art of footballs to provide various markings thereon in order to indicate the proper placement for the user's fingers. It would have been obvious to one of ordinary skill in the art to place the hand indicia as taught by Williams on a football in order to indicate to the user the proper placement for throwing a spiral.

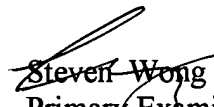
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 703-308-3135. The examiner can normally be reached on Monday through Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven Wong
Primary Examiner
Art Unit 3711

SBW
September 27, 2004